1908-029 Chancery Causes: M. D. Miller vs. H. P. Herd &
Lee Co.

Cation

CA-Debt
T-Property

To the Hon. H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Your orator M. D. Miller, a citizen of Lee County, Virginia, will respectfully show unto your honor that he is engaged in the mercantile business in said County and that one of his customers is one H. P. Herd, who has been trading with your orator for the last eight or ten years, and has always until recently been reasonably prompt in the payment of his accounts. In the last two or three years the said H. P. Herd determined to buy some parcels of land situated in said county of Lee and in paying for the same has fallen behind with his merchantile accounts to what would be a small extent for a man of large means, but for a man of his means to a considerable extent, and has caused him to fall behind with your orator, because your orator, in order to aid the said Herd in paying for said land, has made various payments for him amounting in the aggregate to $100.00 paid directly to the party from whom he purchased said land, to-wit $50.00 paid about December, 1905, and $50.00 on November 26th, 1906. The first $50.00 however was covered by a note, but in the settlement of said note the said Herd caused his account to become over-due until he now owes your orator, including the last named $50.00, the sum of $180.94, all of which is due and should bear interest from Sept. 1st, 1908.

Your orator will now show your honor that the land so purchased by the said Herd was purchased from his step-son, Elijah Noell Catron and consists of two parcels adjoining each other, and your orator is informed, believes, and charges that both these parcels of land was purchased and paid for exclusively by the said H. P. Herd, but he is further informed that when a conveyance was made of said two parcels of land, that they were conveyed to the said H. P. Herd and Maria Herd his wife, the said Maria being the mother of the said Elijah Noell

Catron. But after the making of said deed as your orator is informed, and for the purpose of hindering, delaying, and defrauding your orator in the collection of his said debt, the said Elijah Noell Catron, perhaps without the knowledge of the said H. P. Herd, took up the deed which had originally been made by him to the said H. P. Herd and Maria Herd his wife, destroyed it and executed a new deed, by which he conveyed said land directly to his mother, the said Maria Herd. It is proper in this connection to state that your orator is informed that the said H. P. Herd had left the State of Virginia where he has for a long time resided, just a short time before the last named deed was was executed to the said Maria Herd alone.

Your orator will now show your honor that the said H. P. Herd has very recently absconded and gone to parts unknown to your orator. He has left little or no property in the state of Virginia, except the two parcels of land above described, and your orator avers that both these parcels of land were purchased and paid for by the said. H. P. Herd, $100.00 of the purchase price of which was paid by your orator for him. And he further avers that the whole purpose of said Elijah Noell Catron, in making the conveyance first to Herd and wife, was in wrong of the rights of the said H. P. Herd and his creditors, and he avers further that the purpose of taking up and destroying the first named deed and the execution of the new deed, was for the express purpose of hindering, delaying, and defrauding the creditors of the said H. P. Herd, and especially of your orator.

Your orator will now show your honor that the said H. P. Herd is indebted to him in the full and just sum of $180.94, with interest thereon from the 1st of September, 1908, and that he has a right to recover from the said H. P. Herd that much money in the least. The said H. P. Herd is now a non-resident of the State of Virginia. He has land as aforesaid belonging to him situated in the County of Lee

and State of Virginia.

Now, the object of this bill is to attach said lands and subject them to the payment of your orators debt, and for that purpose to set aside, annul, and make void the deed executed only a few days ago by the said Elijah Noell Catron to the said Maria Herd, and if necessary to set aside the former deed made by the said Catron to the said H. P. Herd and Maria Herd, his wife, and to subject said land as the lands of the said H. P. Herd to the payment of your orators debt. (Your orator would file a copy of said deed but they have not yet been placed to record.) And your orator being without adequate remedy at law pbays your honors court of Chancery to take cognizance of his cause and grant him proper relief, and to this end he makes H. P. Herd, Maria Herd, and Elijah Noell Catron the parties defendant to this bill, and he prays that they each be required to answer the same, but not on oath, answer under oath being expressly waived, and that upon a final hearing said deeds, or such one of them as is necessary, be set aside and that said lands be decreed to be sold for the payment of your orators debt, and for full and complete general relief may spa. issue.

Duncan & Cridlin P.Q.

Virginia,

Lee County, to-wit:

I, George P. Cridlin, a commissioner in Chancery, in and for the County of Lee and State aforesaid, do certify that M. D. Miller this day made oath before me that the facts stated in the foregoing bill are true as he verily believes.

Given under my hand this the 10th day of September, 1808.

Geo. P. Cridlin
Commissioner in Chancery.

1.50

Costs:

Clerk	$7.32
Tax	1.50
Shff.	2.00
Atty.	15.00
Printer	9.40
	$35.22

M. D. Miller
vs. { In Chy.
H. P. Herd et al

Bill in Chancery.

Filed in my office this the 10th day of September, 1908.

H. C. T. Ewing,
Clerk

1908 - First Nov. Rules
Spa with attachment indorsed executed as to home defendants & D. N. as to them contd for O.P. as to non-residents

1908 - Second Nov. Rules
D. N. confirmed as to home defendants O.P. completed & cause set for hearing.

5

M. D. Miller .....Plaintiff.

Vs.

H. P. Herd and others.....Defendants.

This cause came on this day to be heard upon the bill of the complainant and the answer of Mariah Herd this day filed in open court, together with the contract of agreement between the said Mariah Herd, Taylor Herd, Floyd Robinson, and C. P. Neeley, and was argued by counsel.

On consideration of all which the court doth approve and confirm the said agreement aforesaid, and in order to carry out said compromise, it is adjudged, ordered and decreed that Geo. P. Cridlin, who is hereby appointed a commissioner for the purpose to convey the land mentioned and described in said agreement to Taylor Herd and Hassie Herd his wife, by deed with convenants of special warranty.

And it is further adjudged, ordered and decreed that the said M. D. Miller recover from the said H. P. Herd the sum of $180.94, with interest thereon from September 1st, 1908, and the costs of this suit to be taxed by the clerk, which said recovery is decreed to be a lien upon said land, and the said Taylor Herd is directed to pay the same out of the purchase price agreed to be paid by him for said land, and when said payment is made, the said Taylor Herd and Hassie Herd his wife shall take and hold said land by title firm and stable. Said Commissioner Cridlin will report said deed to ~~some future day of this~~ of the court, ~~until which time this cause is continued~~.

And it appearing that the said Geo. P. Cridlin, Special Commissioner has this day filed his report and the deed therewith which he is herein before directed to execute to said Taylor and Hassie Herd, and the said deed having been seen and inspected by the Court, and there being no exceptions to said report or to said deed, it is therefore, further adjudged, ordered and decreed that the said report of the said Geo. P. Cridlin, Special Commissioner, this day filed and the deed therewith, be and the same are hereby approved and con-

firmed, and the Clerk of this court will permit the parties grantees in said deed to withdraw said deed from the file in this cause. And said H. P. Herd and Hassie Herd will pay to said Special Commissioner Cridlin the sum of $5.00 for the execution of said deed, for which execution may issue if necessary.

And there appearing nothing further to be done in the cause, it is hereby stricken from the docket.

M. D. Miller
vs. { In Chy.
H. P. Herd et al

Entered in C.O.B.
#8, page 428 &c.

Enter this Decree
H. a W Skinn
Dec. 15, 1908.

M. D. Miller - Plaintiff

Vs. In Chancery.

H. P. Herd et al - Defendants

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

Your undersigned Special Commissioner, who was by a decree entered by your Honor in the above styled cause on this day, appointed Special Commissioner for the purpose and directed to execute a ded with covenants of Special Warranty conveying to Taylor Herd and Hassie Heard the land therein referred to, and which is described in the contract filed with the answer of Mariah Heard in said cause, begs leave to report that he has executed and acknowledged said deed and he herewith files the same marked "DEED" for the inspection of the Court.

All of which is respectfully submitted.

Geo. P. Criddlin

Special Commissioner.

M. D. Miller

vs. { In Eq

A. P. Herd et al

Report of Deed

Filed Dec. 15, 1908

H. C. P. Ewing, clerk

This agreement made and entered into this the 27th day of October 1908, by and between Maria Herd, wife of H. P. Herd, party of the first part, and Taylor Herd, party of the second part, all of Lee County, Va.

WITNESSETH, that whereas by deed dated on the 7 day of September 1908, Elijah Noell Catron conveyed to the said Maria Herd, a tract of land situated in Lee County, Virginia, on the south side of the Hickory Hill and the waters of the north fork of Clinch River, containing fifty acres more or less; and,

Whereas M. D. Miller has instituted a suit in the Circuit Court of Lee County against the said H. P. Herd, Maria Herd, and Elijah Noell Catron, the purposes of which was and is to set aside and annul said deed executed by the said Catron to the said Maria Herd, and set up instead thereof a deed which the said Catron had previously made to the said H.P.Herd and Maria Herd, and the object of which was to collect from the said H.P.Herd the sum of $180.00 with interest thereon from the 1st day of September, 1908, till paid. And the said Maria Herd desiring to settle and adjust said sum without unnecessary costs has agreed with the said Taylor Herd to sell him he following described boundary or parcel of land, being a part of the said tract conveyed to her by the said Elijah Noell Catron, and bounded as follows:

BEGINNING at a Black gum,corner to the lands of Isaac S. Herd and with the same east to a beach, thence continuing with the said Herds line to a gate, thence S.E. with the road to a small cherry tree. Thence W.W. crossing a bottom to an ash. Thence from the ash continuing the same course about 2 2/3 poles to a stake, thence S.E. to a beach, thence continuing the same course to the state line and with the said State line westwardly to a white oak, thence northwardly to the Beginning, containing thirty acres more or less, for which said land the said Taylor Herd agrees to pay off , settle and discharge the following debts to-wit:

The debt in favor of the said M. D. Miller of $180.94 with interest as aforesaid. Debt of about $160.00 to $170.00 in favor of Milam Willis & Bro. for which suit has been instituted. Also a debt of about $30.00 due by note to W. S. Moore, and to pay such additional sums after the settlement of these debts up to the sum of $400.00, the agreed price of said land. And the said Maria Herd agrees to convey, or have the court to convey a good and sufficient deed to said land to said Taylor Herd. Said $400.00 aforesaid is to be paid by the said Taylor Herd at the December term of the Circuit Court of Lee County, provided said deed as aforesaid is then made and delivered to him.

In Witness Whereof the said parties have signed and sealed this instrument in duplicate. This the day and date first above written.

Taylor his X mark Herd (Seal)

Maria her X mark Herd (Seal)

Floyd Robinson

C. P. Neeley

I also ask this Deed to be made to Taylor Herd and wife Hassie Herd

This Oct 28th 1908

Taylor Herd

To the Honorable H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia.

The separate answer of Maria Herd and a bill exhibited in your honorable court against her and others by M. D. Miller, and to a petition filed in the same in favor of Milam Willis and brother, or a suit instituted by them against the said parties above mentioned. Respondent admits the indebtedness in favor of each of said parties set out and mentioned in said suit, and she admits a further indebtedness to W. S. Moore of about $30.00. She further admits that this land was purchased and was jointly conveyed to her husband H. P. Herd and herself, and she is willing that enough of said land be subjected for the payment of said debts, and to this end she has made a contract with Taylor Herd by which she has sold him a certain parcel of said land and he has agreed to pay off and discharge said debts, and desires that the court make, or direct to be made a deed to the said Taylor Herd, or to whomsoever he requests said deed to be made to for the land described in the agreement between hereself and the said Taylor Herd, which is hereby filed as a part hereof marked exhibit "A".

Respondent will now show your honor that the pricex which the said Herd has agreed to pay her for said land is a full consideration for the same, and is probably considerably more than said land would bring if subjected to public sale.

And now having answered said bill as fully as she is advised it is material for her to answer the same, she prays to be heiced dismissed with her costs.

Know all men that I, M.D.Miller, plaintiff in the hereinafter styled cause, do give notice of Lis Pendens, and Attachment, by this memorandum which sets forth as follows:

There is now pending in the Circuit Court of Lee County, Virginia a certain suit in chancery the title of which is M.D.Miller against H. P. Herd et al; the general object thereof is to attach the hereinafter described lands and subject the same to the payment of a debt of $180.94, with interest thereon from the 1st day of September, 1908, which said H. P. Herd owes to the said M.D.Miller, and, if necessary, for that purpose, to set aside and annul a deed executed by Elijah Noel Catron, recently, attempting to convey to Mariah Herd the said land, and also, if necessary, to set aside and annul a deed executed by the said Elijah Noel Catron conveying said land to H.P.Herd and Mariah Herd; the description of the land is as follows: A tract of land, composed of two parcels, lying on the waters of the North Fork of ~~Blackwater~~ Clinch River, in the Jonesville Magisterial District, in Lee County, Virginia, containing about 50 acres more or less, lying adjoining the lands of Isaac Herd, Alex Herd, the heirs and Widow of David Willis, deceased, Elijah Noel Catron and Taylor Herd, being the same land purchased by said H.P.Herd from Elijah Noel Catron, and upon which the said Mariah Herd now resides; and the names of the persons whose estate is intended to be effected thereby are H.P.Herd and Mariah Herd.

Witness my hand this the 10th day of September, 1908.

M. D. Miller

Virginia, Lee County, to-wit:

I, Geo.P.Cridlin, a Commissioner in Chancery for the Circuit Court of Lee County, Virginia do certify that M.D.Miller, whose name is signed to the foregoing ~~deed~~ writing bearing date on the 10th day of September, 1908, has acknowledged the same before me in my County aforesaid.

Given under my hand this the 10th day of September, 1908.

Geo. P. Cridlin
Commissioner in Chancery.

Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 10th day of September, 1908, the foregoing writing was presented, and together with the certificate thereto annexed, admitted to record. at 2:15 o'clock P. M.

Teste: H. C. T. Ewing, Clerk.

M. D. Miller
vs. { In Chy.
H. P. Ford et al
Memorandum of
his Studies & Attachment
Filed for Record Sept.
10th, 1908, at 2:15, O'clock
P. M.
H. C. T. Ewing
Clerk.

Recorded in Deed
Book 47, page 395
Examined Sept 24 1908
Indexed

Clerk $1.25

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 242—Affidavit for Attachment.

In the Circuit Court of the County of Lee

M. D. Miller

Plaintiff

against

H. P. Herd, Mariah Herd and Elijah Noel Catron

Defendant

} In Chancery

M. D. Miller maketh oath and saith, that he believes the claim, for which the above entitled ~~action~~ suit is instituted, to be just; that he, the affiant, believes that he, said M. D. Miller is entitled to and ought to recover in said action $180 94 (at the least), with interest thereon to be computed at the rate of six per centum per annum, from the 1st day of September 1908, till paid; and that to the best of affiants belief the said defendant: H. P. Herd is

1. Is ~~a foreign corporation, or~~ not a resident of this State, and has estate, or debts owing to said defendant within the County of Lee in which the action is or sued with a defendant residing therein;

2. Is removing ~~or~~ about to remove out of this State, with intent to change his domicile.

~~3. removing, or intend to remove, or ha removed~~

~~own estate, or the proceeds of the sale of property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;~~

~~4. converting, or about to convert, or ha converted, property or some part thereof into money, securities, or evidences of debt, with intent to hinder, delay, or defraud creditors.~~

~~5. Ha assigned or disposed of, or about to assign or dispose of, estate, or some part thereof, with intent to hinder, delay, or defraud creditors.~~

M. D. Miller

Subscribed and sworn to before me, this 10 day of September 1908.

M. C. Hanany, Deputy Clerk
for H. C. P. Ewing, Clerk

Form No. 242.

M. D. Miller

vs. } AFFIDAVIT FOR ATTACHMENT.

A. P. Herd

Filed the 10th day of September 1908

H. G. Ewing,
Clerk

BOATRIGHT PRINTING CO., GATE CITY, VA.

In the Clerk's Office of the Circuit Court of the county of Lee, on the 10th day of September, 1908

M. D. Miller
against Plaintiff,
H. P. Herd, Mariah Herd and Elijah Noel Catron
Defendants

In Chancery.

The object of this suit is to Attach the lands of the defendant H.P.Herd, lying on the waters of the North Fork of Clinch River in Lee County, Virginia, being about 50 acres of land which said H.P.Herd purchased from Elijah Noel Catron, adjoining the lands of Isaac S.Herd and others, and being the same land upon which the said Mariah Herd now resides, and to subject the same to the payment of a debt of $180.94, which the said H.P.Herd owes to said plaintiff, with interest thereon from the 1st day of September, 1908, and if necessary for that purpose to set aside and annul a deed executed recently by said Elijah Noel Catron, attempting to convey said land to the said Mariah Herd, and also if necessary to set aside and annul a former deed executed by the said Elijah Noel Catron conveying said land to H.P.Herd and Mariah Herd

And an affidavit having been made and filed that the defendant H. P. Herd is not residenta of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the Jonesville Star and that a copy be posted at the front door of the Courthouse of this county as prescribed by law.

A copy—Teste:

Duncan & Cridlin, p. q.

H. C. G. Ewing, Clerk.
By W. Hanley, D.C.

M. D. Miller

vs. { ORDER OF PUBLICATION

H. O. Ford, et al,

Virginia, Lee County, to wit:

I, A. C. Ewing, County Clerk for and in the County and State aforesaid, do certify that I posted a true copy of the within order of publication at the front door of the Court-House of said County on this day.

Given under my hand this Sept. 10th, 1918.

A. C. Ewing,
Clerk.

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 302.

In the Clerk's Office of the Circuit Court of the County of Lee

M. D. Miller

Plaintiff,

against

A. P. Herd, Mariah Herd and Elijah Noel Catron

Defendant.

In Chancery.

This day M. D. Miller personally appeared before me H. C. I. Ewing Clerk of the said Court, and being duly sworn, made oath that A. P. Herd

defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as ~~Deputy~~ Clerk of the said Court, this 10th day of September 1908.

M. E. Hamary, D. Clerk for
H. C. I. Ewing, Clerk.

Form No. 302.

M. D. Miller

vs. { AFFIDAVIT FOR ORDER OF PUBLICATION.

H. P. Herd

Duncan & Criddle p. q.

Filed Sept. 10, 1908.
W. C. Ewing,
Clerk.

Everett Waddey Co., Stationers and Printers, Richmond, Va. Form No. 300.

The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon H. P. Herd, Marian Herd and Elijah Noel Catron,

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules to be held for the said Court, on the 1st Monday in November 1908, to answer to a bill in chancery, exhibited against them in our said Court by

M. D. Miller

And have then there this writ. Witness, H. C. T. Ewing A. B. MUNSEY, Clerk of our said Court, at the court-house, the 10th day of September 1908, and in the 132nd 12 year of the Commonwealth.

H. C. T. Ewing, Clerk.

COMMONWEALTH OF VIRGINIA,

To the Sheriff of Lee County- Greeting:

Whereas, M.D.Miller has, in the Clerk's Office of our Circuit Court of the County of Lee, this day filed a bill in equity against H.P. Herd, Mariah Herd and Elijah Noel Catron, for the purpose of having an attachment to secure and enforce his claim against H.P.Herd to a debt, and

Whereas, said M.D.Miller, plaintiff in said bill, has, before me in my said office, in the County of Lee, and State of Virginia, made affidavit that the said plaintiff's said claim is believed to be just, and is now due and payable, that affiant believes that he, the said plaintiff is entitled to and ought to recover, at least, the sum of $180.94, with interest thereon from the 1st day of September, 1908 till paid; that to the best of affiant's belief the said defendant H.P.Herd is not a resident of this State, and has estate and debts owing to him within the County of Lee; is removing and about to remove out of the State, with intent to change his domicile; and

Whereas, upon such affidavit, the plaintiff doth now require me, the said Clerk, to endorse on a summons an order to the officer to whom it is directed to attach ~~[illegible]~~ the estate of the said H.P.Herd, both real and personal in Lee County;

Therefore, we order and command you that you attach the estate of the said H.P.Herd, both real and personal, in Lee County, and such estate so attached in your hands to secure that the same shall be forthcoming a and liable to further proceedings thereupon, to be had before our said Circuit Court at the next December term thereof, and that you on the 1st Monday in November, 1908, have then and there this writ, and make return how you have executed the same.

Witness, H.C.T.Ewing, Clerk of our said Court, at the Courthouse thereof, in the County and State aforesaid, the 10th day of September, 1908.

H.C.T. Ewing, Clerk.

Form No. 300

M. D. Miller

vs.

SUBPŒNA IN CHANCERY.

H. P. Herd et al

Summit Creditor p. q.

To 1st November Rules

Lee Circuit Court.

1908.

Levied on the following real estate of the defendant H.P.Herd, to-wit: a tract of land, composed of two parcels, lying on the waters of the North Fork of Clinch River in the Jonesville Magisterial District, Lee County, Virginia, containing about 50 acres more or less, adjoining the lands of Isaac S.Herd, Alex Herd, the heirs and widow of David Willis deceased, Elijah Noel Catron and Taylor Herd, being the same land purchased by said H.P.Herd from Elijah Noel Catron, and being the same land upon which the said Mariah Herd now resides, this the 11 day of September, 1908.

W. G. Glass D. Sheriff

Sheriff.

Dpr. W. G. Tucker Sheriff

Further executed on this day by delivering a true copy of the within summons and attachment to Mariah Herd, she being the persons in possession of the real estate this day levied on by me as the property of H.P.Herd, and also by delivering a true copy thereof to Elijah Noel Catron. This the 11 day of September, 1908.

W. G. Glass D. Sheriff

Dpr. W. G. Tucker Sheriff

Order of Publication.

In the Clerk's Office of the Circuit Court of the county of Lee, on the 10th day of September, 1908.

M. D. MILLER, Plaintiff,

against

H. P. HERD, Mariah Herd and Elijah Noel Catron, Defendants.

The object of this suit is to attach the lands of the defendant H. P. Herd, lying on the waters of the North Fork of Clinch river, in Lee county, Virginia, being about 50 acres of land which said H. P. Herd purchased from Elijah Noel Catron, adjoining the lands of Isaac S. Herd and others, and being the same land upon which the said Mariah Herd now resides, and to subject the same to the payment of a debt of $180.94, which the said H. P. Herd owes to said plaintiff, with interest thereon from the 1st day of September, 1908, and, if necessary for that purpose to set aside and annul a deed executed recently by said Elijah Noel Catron, attempting to convey said land to the said Mariah Herd, and also if necessary to set aside and annul a former deed executed by the said Elijah Noel Catron conveying said land to H. P. Herd and Mariah Herd. And an affidavit having been made and filed that the defendant H. P. Herd is not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the Jonesville Star and that a copy be posted at the front door of the Courthouse of this county as prescribed by law.

A copy—Teste:

H. C. T. EWING, Clerk.

By M. E. FLANARY, D. C.

DUNCAN & CRIDLIN, p. q.

M. D. Miller

vs { Mr. Chaney

H. P. Herd, Et al

I, J. C. Boutrides, editor of The Jonesville Star, a weekly newspaper published in the county of Lee, state of Virginia, do hereby certify that the enclosed notice was published in said paper once a week for four successive weeks, commencing on the 17 day of Sept 1908

J. C. Boutrides, Editor.

FEE $ 9.40